

Decision 06-05-002 May 1, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Embarq Corporation And Sprint Long Distance, Inc. (U 6988 C), and Sprint Payphone Services, Inc. (U 6018 C) For Approval of an Indirect Transfer of Control of Sprint Long Distance, Inc. and Sprint Payphone Services, Inc. (U 6018 C).

Application 06-03-015
(Filed March 9, 2006)

OPINION APPROVING ACQUISITION OF INDIRECT CONTROL

1. Summary

This decision authorizes Embarq Corporation (Embarq) to acquire control of Sprint Long Distance, Inc (Sprint LD) and Sprint Payphone Services, Inc. (SPSI) from Sprint Nextel Corporation (Sprint). This transfer of control is to take place through a contribution of 100% of the ownership interest in Sprint LD and SPSI to Embarq from Sprint.

2. Parties

Sprint LD, a Delaware corporation qualified to transact business in California, was granted a Certificate of Public Convenience and Necessity (CPCN) to operate in California as a switchless reseller of inter-Local Access and Transport Area (LATA) and intra-LATA telecommunications services offered by communication common carriers in California. This authority was granted on March 24, 2006, pursuant to D.06-03-030, which assigned Sprint LD its corporate identification number U-6988-C. Sprint LD was created for the purpose of

providing intrastate interexchange services for Embarq's competitive local exchange carrier (CLEC) customers that have multi-state locations, including California, and who presently receive services from Sprint Communications Company, L.D. Sprint LD does not have any incumbent local exchange carrier (ILEC) operations in California.

SPSI, a Florida corporation qualified to transact business in California, was granted a CPCN to operate in California as a switchless reseller of inter-LATA and intra-LATA telecommunications services offered by communications common carriers in California. This authority was granted on July 1, 1998, pursuant to D.98-07-003, which assigned SPSI its corporate identification number U-6018-C.

Sprint LD and SPSI are wholly-owned subsidiaries of Sprint, a publicly-traded Kansas corporation. Sprint is a global communications company providing nationwide wireless and long distance, and local communications services in 18 states.

Embarq, a Delaware corporation, is a newly-formed holding company and subsidiary of Sprint. It was established to separate the ILEC operations of Sprint into an independent, stand-alone operation pursuant to a December 15, 2004 merger agreement between Sprint and Nextel Communications, Inc. (Nextel), as detailed in its application.

3. Background

Sprint Corporation and Nextel entered into a December 15, 2004 merger agreement resulting in Nextel merging into a wholly-owned subsidiary of Sprint effective August 12, 2005. At that time, Sprint Corporation changed its name to Sprint. A condition of that merger agreement required the merging companies to use their best efforts to separate the ILEC business of Sprint Corporation by

means of a tax-free spin-off to the then existing stockholders of Sprint. Pursuant to that condition of the merger agreement, Applicants jointly filed this application.

4. Requested Authority

Applicants request approval of the transfer of control of Sprint LD and SPSI to Embarq from Sprint. The proposed transfer of control will take place through a contribution of 100% of Sprint's ownership interest in Sprint LD and SPSI, as well as Sprint's ILECs, to Embarq from Sprint. Sprint LD and SPSI will remain regulated interexchange carriers in California. Instead of its current parent Sprint, the new ultimate corporate parent will be Embarq.

Embarq will operate independently from Sprint and will have its own management team and board of directors. The senior executive team of Embarq is made up of many of the same executives that have guided Sprint's local operations in the past. Current Sprint Board members will serve on the board of directors of Embarq, and will resign from the Sprint board of directors at that time.

Applicants represent that the proposed transaction is in the public interest because it will enable Embarq to focus on building upon its wireline capabilities by providing a full portfolio of services, as opposed to the increasingly wireless-centric focus of Sprint. This transfer of control will also allow for increased focus and attention to Sprint LD and SPSI customers in California. Embarq will, among other things, raise capital for Sprint LD and SPSI, and at the completion of the transaction, will be a financially secure Fortune 500 company, whose stock is expected to be traded on the New York Stock Exchange.

This transfer of control is to be transparent to the customers of Sprint LD and SPSI. To that end, on the day after the transfer of control, Sprint LD and

SPSI will offer the same full range of products and services that it offered the day prior to separation, at the same prices, and under the same terms and conditions. The only known change to the customers of Sprint LD and SPSI will be a name change. Name changes will not take place until after Embarq separates from Sprint and after it complies with Commission registration and notification requirements.

Applicants tendered under seal copies of pro-forma financial statements that are consistent with and materially the same as certain pro forma financial statements that are being prepared by the holding company of the Applicants for filing with the Securities and Exchange Commission (SEC) in connection with the planned registration of Embarq to become a publicly-traded company. This information was filed under seal because SEC regulations prohibit selective disclosure of material and the information, if disclosed, could place Applicants at a competitive disadvantage.

All information placed under seal should remain sealed for a period of two years from the date of this order, and during that period should not be disclosed to anyone other than Commission staff except on the execution of a mutually accepted protective order or further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge.

There were no protests to this application.

4. Discussion

Applicants seek approval of the proposed transfer of control pursuant to Pub .Util. Code § 854(a).¹ Section 854(a)² states, in relevant part, as follows:

No person or corporation...shall merge, acquire, or control...any public utility organized and doing business in this state without first securing authorization to do so from the commission...Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to § 854(a).³ The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.⁴ The Commission may also consider if the transaction will serve the public interest.⁵ Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.⁶

¹ Sections 854(b) and (c) are not applicable in this proceeding because the combined California revenues of Sprint and SPSI are substantially less than the \$500 million minimum requirement needed to invoke the requirements of those sections of the code.

² All statutory references are to the Public Utilities Code unless otherwise stated.

³ See D.95-10-045, 62 CPUC 2d 160 at 167 and, D.91-05-026, 40 CPUC 2d 159 at 171.

⁴ See D.00-06-079, mimeo., p. 13; D.00-06-057, mimeo., p. 7; and, D.00-05-047, mimeo., p. 11.

⁵ See D.00-06-005, 2000 Cal. PUC LEXIS 281.

⁶ See D.95-10-045, 62 CPUC 2d 160 at 167 and 168; and, D.94-01-041, 53 CPUC 2d 116 at 119.

Where, as here, a company acquiring control of certificated communications carriers does not possess a CPCN in California, the Commission applies the same requirements as to an applicant seeking a CPCN to exercise the type of authority held by the company being acquired: a minimum of \$100,000 in cash or cash equivalent, and technical expertise in telecommunications or a related business.

Review of the documents submitted in support of Embarq's financial qualifications indicate that it will have sufficient resources to meet Commission requirements that the actual management of Sprint LD and SPSI will not materially change and that the transaction will be transparent to Sprint LD and SPSI customers. Applicants further declare that there are no plans for any changes in rates, terms, or conditions of Sprint LD and SPSI service.

For the following reasons, we conclude that it is reasonable to grant this § 854(a) application. First, Embarq will have sufficient financial resources to meet Commission requirements. Second, the actual management of Sprint LD and SPIS will not materially change; third, Sprint LD and SPSI will continue to operate as they have in the past with no change in rates, terms, or conditions of service. Fourth, the public may benefit from the transfer of control to the extent the transaction enhances the ability of Sprint LD and SPSI to maintain and expand their services and operations in California. Fifth, there is no opposition to this application. For these reasons, we see no reason to withhold authority for the transfer of control before us here.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3170, dated April 13, 2006, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Notice of this application

appeared in the Commission's Daily Calendar of March 17, 2006. No protests have been received. Given this status public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3170.

6. Expedited Approval

Applicants have requested expedited approval of this application by the Executive Director. Ordering Paragraph 1 of D.87-10-035 provides in relevant part that the Executive Director may grant non-controversial applications by non-dominant telecommunications carriers for authority to transfer assets or control under §§ 851-855.⁷

7. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Pursuant to § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

8. Assignment of Proceeding

Rachelle Chong is the Assigned Commissioner and Michael J. Galvin is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Resolution ALJ 176-3170 determined that this was a ratesetting proceeding and that hearings were not necessary.
2. Notice of this application appeared in the Commission's Daily Calendar of March 17, 2006.
3. There is no opposition to this application.

⁷ See D.87-10-034, 25 CPUC 2d 459 at 462 (1987).

4. Sprint LD possesses a CPCN to operate in California as a switchless reseller of inter-LATA and intra-LATA telecommunications services offered by communication common carriers in California under the U-6988-C corporate identification number.

5. SPSI possesses a CPCN to operate in California as a switchless reseller of inter-LATA and intra-LATA telecommunications services offered by communication common carriers in California under the U-6018-C corporate identification number.

6. Applicants seek authority for Embarq to acquire control of Sprint LD and SPSI through a transfer of 100% of the ownership interest of Sprint LD and SPSI from Sprint.

7. Pub. Util. Code § 854(a) requires Commission authorization to transfer control of a public utility. Any transfer of control without Commission authorization is void under the statute.

8. Sprint LD and SPSI will continue to offer the same full range of products and services at the same prices and under the same terms and conditions.

9. Embarq will not change the names of Sprint LD and SPSI until after it separates from Sprint and after it complies with Commission registration and notification requirements.

10. Embarq has the technical, managerial, and financial qualifications necessary to exercise control of Sprint LD and SPSI.

Conclusions of Law

1. This is a ratesetting proceeding and no hearing is necessary.
2. This application should be approved and become effective immediately because it is not adverse to the public interest and the public may benefit from

ability of Sprint LD and SPSI to maintain and expand its services and operations in California.

3. Approval of this application is not a finding of value of the rights and property being transferred.

O R D E R

IT IS ORDERED that:

1. Sprint Nextel Corporation (Sprint) is authorized pursuant to Section 854(a) of the Public Utilities Code to transfer to Embarq Corporation (Embarq) the ownership interests of Sprint Long Distance, Inc. (Sprint LD) and Sprint Payphone Services, Inc. (SPSI), as more fully described in the application and exhibits attached to the application.

2. Sprint LD and SPSI shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized herein, within 10 days after the transfer takes place. A true copy of the instrument(s) of transfer shall be attached to the notification.

3. Embarq, Sprint LD and SPSI's (Applicants) request to keep financial information under seal is granted for two years from the date of this order, and during that period shall not be disclosed to anyone other than Commission staff except on the execution of a mutually accepted protective order or further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge.

4. Applicants shall comply with the Commission's notification requirements prior to any change in the names of Sprint LD and SPSI.

5. The authority granted by this decision shall expire if not exercised within 12 months after the effective date of this order.

6. Application 06-03-015 is closed.

This order is effective today.

Dated May 1, 2006, at San Francisco, California.

/s/ STEVE LARSON

STEVE LARSON
Executive Director